

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEPHEN BERO,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

CASE NO. 3:24-cv-05017-GJL

ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND

This matter is before the Court on Plaintiff Stephen Bero's Motion to Remand to state court. Dkt. 11. Having considered Plaintiff's request, Defendant's response, and the remaining record, the Court **DENIES** the Motion (Dkt. 11) for the reasons explained below.

**I. BACKGROUND**

Plaintiff alleges that he suffered water damage to his home caused by a plumbing leak in his kitchen on August 5, 2023. Dkt. 1-1 at 2. At the time, Plaintiff maintained a homeowners' insurance policy through Defendant, which provided indemnity coverage for loss of premises at the home. *Id.* Plaintiff filed an insurance claim with Defendant, who initially accepted coverage for the water loss. *Id.* Plaintiff alleges that he accepted State Farm's offer to use its preferred

1 vendor for the repairs, All American Restoration Services (“All American”), who inspected  
2 Plaintiff’s home and provided a quote of \$32,734.38 to Defendant for approval. *Id.* Defendant  
3 revised the quote to \$19,596.16, thereby reducing the scope of repairs “to the point where All  
4 American did not feel confident it could restore Plaintiff’s home to its pre-loss condition.” *Id.* at  
5 3. According to Plaintiff, Defendant never sent the reduced estimate to Plaintiff or explained to  
6 him why it reduced the scope of work. *Id.*

7 Plaintiff alleges that Defendant failed to investigate the full scope of necessary repairs  
8 and failed to pay the reasonable cost of repair, leaving Plaintiff without use of his kitchen for  
9 several months. *Id.* He further alleges that Defendant never explained to Plaintiff that his policy  
10 afforded coverage for Additional Living Expenses (“ALE”) incurred and failed to pay ALE  
11 benefits owed under the policy. *Id.* Plaintiff thereby asserts claims for (1) breach of contract; (2)  
12 insurance bad faith; (3) violations of Washington’s Insurance Fair Conduct Act (“IFCA”); (4)  
13 violations of the Washington Consumer Protection Act (“CPA”); and (5) negligence. *Id.* at 4–5.

## 14 II. DISCUSSION

15 Under 28 U.S.C. § 1441(a), “[a] defendant generally may remove an action filed in state  
16 court if a federal district court would have had original jurisdiction over the action,” *Chavez v.*  
17 *JPMorgan Chase & Co.*, 888 F.3d 413, 415 (9th Cir. 2018), which may be based on diversity of  
18 parties when the amount in controversy “exceeds the sum or value of \$75,000, exclusive of  
19 interest and costs.” *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir.  
20 2016) (citing 28 U.S.C. § 1332(a)) (cleaned up).

21 To determine whether the facts supporting removal are ascertainable, Ninth Circuit courts  
22 apply the “unequivocally clear and certain” standard. *Dietrich v. Boeing Co.*, 14 F.4th 1089,  
23 1094 (9th Cir. 2021). Other circuits applying this standard have held that the papers must provide  
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1 specific and unambiguous information that shows the case is removable. *Berera v. Mesa Med.*  
2 *Grp., PLLC*, 779 F.3d 352, 364 (6th Cir. 2015); *Walker v. Trailer Transit, Inc.*, 727 F.3d 819,  
3 825 (7th Cir. 2013).

4 Courts use two legal standards to assess whether a defendant has met its burden of  
5 showing the case exceeds the amount in controversy minimum. *Gierke v. Allstate Prop. & Cas.*  
6 *Ins. Co.*, No. C19-0071JLR, 2019 WL 1434883, at \*2 (W.D. Wash. Apr. 1, 2019). The first  
7 standard applies when satisfaction of the amount in controversy is “facially apparent” from the  
8 complaint. Thus, if the plaintiff claims a dollar amount in controversy on the face of their  
9 complaint, the defendant can generally rely on the sum claimed when removing the case. *See*  
10 *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997).

11 The second standard applies when the plaintiff's requested damages are unclear. *Gierke*,  
12 2019 WL 1434883, at \*2 (citing *Singer*, 116 F.3d at 376). In that instance, the defendant bears  
13 the burden of proving, by a preponderance of evidence, that the amount in controversy exceeds  
14 \$75,000.00. *Id.* In determining the amount in controversy, the court considers facts in the  
15 removal petition and any relevant “summary judgment-type evidence.” *Id.* In weighing the  
16 evidence, the court considers “the reality of what is at stake in the litigation, using reasonable  
17 assumptions underlying the defendant's theory of damages exposure.” *Ibarra v. Manheim Invs.*,  
18 *Inc.*, 775 F.3d 1193, 1198 (9th Cir. 2015).

19 Here, there is no dispute about whether there is complete diversity between the parties;  
20 the only question before the Court is whether the amount in controversy exceeds \$75,000. Dkt.  
21 11 at 4–6. In its Notice of Removal, Defendant argues that the “estimated cost of repair of  
22 \$32,734.38, together with attorney’s fees, costs, exemplary and enhanced damages under IFCA,  
23 and treble damages pursuant to [CPA]” exceeds the jurisdictional threshold of \$75,000. Dkt. 1 at  
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1 2. Plaintiff notes in the present Motion, however, that on December 19, 2023, Defendant “issued  
2 a check to Plaintiff in the amount of \$20,008.81 for a portion of the dwelling repair costs  
3 Plaintiff seeks to recover in this matter.” Dkt. 11 at 2. Defendant acknowledges this fact in its  
4 Response but argues that “the amount of controversy is determined at the time of filing and not  
5 affected by a later payment [. . .] the amount is determined from the operative complaint at the  
6 time of removal.” Dkt. 14 at 5 (citing *Chavez v. J.P. Morgan Chase & Co.*, 888 F.3d 413, 414–  
7 15. (9th Cir. 2018)). In his Reply, Plaintiff notes that the amount in controversy is determined at  
8 the time of removal and, because Defendant made this payment prior to removing the case, the  
9 Court must consider the \$20,008.81 reduction in its analysis. Dkt. 16 at 2–3.

10 Defendant’s suggested analysis would require the Court to examine the Complaint in a  
11 vacuum, despite activity prior to removal reducing the amount Plaintiff can recover. This  
12 contradicts the requirement that courts review the amount in controversy *at the time of removal*  
13 as explained in *Chavez*, 888 F.3d at 414–15, as well as the requirement to consider “the reality of  
14 what is at stake in the litigation.” *Ibarra*, 775 F.3d at 1198. Thus, the Court must determine  
15 whether Defendant has shown by a preponderance of the evidence that Plaintiff’s requested  
16 damages, when reduced by \$20,008.81, exceed \$75,000.

17 Subtracting \$20,008.81 from the \$32,734.38 contractual damages alleged by Plaintiff  
18 leaves \$12,725.57 in dispute over repair costs. Because Plaintiff seeks exemplary damages under  
19 IFCA (\$38,176.71 if treble damages are awarded) and enhanced damages under CPA (limited to  
20 \$25,000 if treble damages are awarded) the total of these amounts equals \$63,176.71 in damages.  
21 Dkt. 1-1 at 5. Plaintiff argues that the Court should not consider treble damage amounts because  
22 such damages are discretionary and because Defendant “provides no evidence that Plaintiff  
23 would be entitled to a maximum treble damages award.” Dkt. 16 at 3. The Court disagrees.

1 “When pressing that the sum of damages meets the statutory minimum, a defendant may  
2 rely upon plaintiff’s claims of (1) general and specific damages; (2) punitive damages, including  
3 treble damages under the CPA, up to \$25,000, and treble damages under IFCA; and (3)  
4 contractually or statutorily-authorized attorney’s fees.” *Brumfield v. Standard Fire Ins. Co.*, No.  
5 2:23-CV-0341-TOR, 2024 WL 621093, at \*3 (E.D. Wash. Feb. 14, 2024) (collecting cases)  
6 (internal citations omitted).

7 Defendant bridges the remaining gap between \$63,176.71 in trebled repair costs and the  
8 jurisdictional amount of \$75,000 by accounting for (1) attorney fees requested by Plaintiff,  
9 which Defendant estimates at around \$500-700 per hour based on similar insurance cases; and  
10 (2) ALE damages from the cost of renting a separate apartment in Tacoma for seven months,  
11 which Defendant estimates at around \$1,600 per month based on Tacoma’s median rental price.  
12 Dkt. 14 at 9–10. Plaintiff does not substantially refute these estimates in its Reply. Instead, he  
13 argues in conclusory fashion that these amounts are “speculation and conjecture” which rely on  
14 unreasonable assumptions about Plaintiff’s additional living expenses and attorney’s fees. Dkt.  
15 16 at 4–5.

16 The Court finds that Defendant’s estimate of additional expenses is reasonable. *See*  
17 *Brumfield*, 2024 WL 621093, at \*3 (reasonable estimates of costs may be accepted, so long as it  
18 is “more likely than not” that the amount in issue exceeds the jurisdictional threshold) (quoting  
19 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996)); *see also Scott v.*  
20 *Cricket Commc’ns, LLC*, 865 F.3d 189, 196 (4th Cir. 2017) (“Estimating the amount in  
21 controversy is not nuclear science, as a removing defendant is somewhat constrained by the  
22 plaintiff [. . .] In many removal cases, a defendant's allegations rely to some extent on reasonable  
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1 estimates, inferences, and deductions.”). Thus, the trebled repair costs under IFCA and CPA,  
2 along with estimated costs of ALE and attorney’s fees, likely exceed \$75,000.

3 Defendant has shown, by a preponderance of the evidence, that the amount in  
4 controversy is greater than the jurisdictional threshold of \$75,000. The Court therefore denies  
5 Plaintiff’s Motion. Accordingly, because the Court finds Defendant has a reasonable basis for  
6 removal, attorney’s fees under 28 U.S.C. § 1447(c) are not appropriate and the Court denies  
7 Plaintiff’s request for these costs.

### 8 III. CONCLUSION

9 For the reasons set forth above, the Court **DENIES** Plaintiff’s Motion to Remand to state  
10 court (Dkt. 11).

11 Dated this 5th day of April, 2024.

12  
13 A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid horizontal line.

14 Grady J. Leupold  
15 United States Magistrate Judge  
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